

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD CLEMONS,

Petitioner,

v.
CIVIL CASE NO. 03-CV-70712-DT
HONORABLE AVERN COHN

TIM LUOMA,

Respondent.

**ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT
BASED ON POST-JUDGMENT FRAUD**

Before the Court is Petitioner's "Motion for Relief from Judgment Based on Post-Judgment Fraud Committed by Respondent," brought pursuant to Federal Rule of Civil Procedure 60(b), concerning this Court's dismissal of his habeas corpus petition on statute of limitations grounds in October, 2003. This is his third motion for relief from judgment. Petitioner asserts that the Court should reverse its prior dismissal because the State has since modified his sentence and extended his discharge date.

Pursuant to Federal Rule of Civil Procedure 60(b), a district court will grant relief from a final judgment or order only upon a showing of one of the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied,

released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. P. 60(b).

Having reviewed the matter, the Court concludes that it did not err in dismissing the habeas petition for failure to comply with the one-year statute of limitations. To the extent that Petitioner is challenging any amended sentence, his proper recourse is to exhaust his state court remedies as to that issue and then to file a new petition for writ of habeas corpus if necessary. Petitioner has failed to establish that he is entitled to relief from judgment in this case.

Accordingly, Petitioner's motion is **DENIED**.

SO ORDERED.

Dated: February 1, 2007

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to the parties of record and Richard Clemons, #232413, Standish Maximum Correctional Facility, 4713 W. M-61, Standish, MI 48658 on this date, February 1, 2007, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160